Supreme Court, U.S.
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No. 99-769

IN THE

Supreme Court of the United States

TIMOTHY M. WHITE,

Petitioner,

v.

SPECTAGUARD, INC. and
SMI OF PATTISON AVENUE, L.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT SMI OF PATTISON AVENUE, L.P.

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Rule:

Fed. R. Civ. P. 42(b) 2, 3, 4, 5, 6

The Respondent, SMI of Pattison Avenue, L.P. ("SMI"), respectfully requests that this Court deny the Petition for Writ of Certiorari seeking to review the opinion of the United States Court of Appeals for the Third Circuit in this case.

STATEMENT OF THE CASE

Petitioner, Timothy White, filed a complaint in the United States District Court for the Eastern District of Pennsylvania on March 24, 1992, seeking recovery against SMI and other defendants, for injuries suffered when, while attending a rock concert at the Spectrum Arena in Philadelphia, Pennsylvania on April 6, 1990, he fell from the stage barricade during an altercation with security personnel. (Petition Appendix "Pa" 2-3).

The district court, after reviewing the file and consulting with counsel at a pretrial conference held on June 1, 1992, bifurcated the case into liability and damage phases. (Pa 5, 23). Petitioner White was represented by different counsel at the time of the 1992 conference than he was during the telephone court conference call with counsel on December 9, 1997. At that time, the district court reiterated its bifurcation ruling and White's present counsel noted his objection. The court overruled the objection, finding that bifurcation was proper. There was no serious dispute that White had been injured, but that liability was hotly contested and the evidence and witnesses for liability and damages were completely separate. (Pa 6, 24, 30).

On February 13, 1998, White filed a motion for reconsideration of the court's decision to bifurcate this case. In response to White's motion, on February 17, 1998, the court conducted a telephone conference. After hearing the

arguments of the parties, the court denied White's motion for reconsideration, but did agree to allow White to explain to the jury the nature of his injury during the liability phase of the trial. (Pa 6, 24, 30).

The liability phase was tried before a jury on March 2-5, 1998. At trial, the evidence showed that White attended the concert in a highly inebriated state and in a manner which jeopardized not only his own safety, but the safety of others at the concert as well. He repeatedly refused to comply with the security guards' directives that he not sit on the barricade which separated the crowd from the stage; and he even punched one of the guards when asked to move. The evidence showed that it was White's extreme intoxication and his negligence as a result of that intoxication that were the cause of his injury. (Pa 38).

Following the three day trial on the issue of liability, the jury returned a verdict in favor of co-defendants SMI and SpectaGuard and against White.

White moved for a new trial on three grounds. The sole ground which is at issue herein is whether the district court's decision to bifurcate was determined through the exercise of informed discretion as contemplated by Fed. R. Civ. P. 42(b).

In denying White's motion for a new trial, the district court detailed the analysis which led to its reasonable and informed decision to bifurcate the liability and damage phases of trial. (Pa 23-24, 27-30). The district court also recognized that White suffered no prejudice in the manner in which the case was tried. (Pa 31).

On appeal, the United States Court of Appeals for the Third Circuit affirmed the ruling of the district court. The Third Circuit Court of Appeals held that "[n]othing in the record establishes that the trial judge had a routine practice of bifurcating personal injury or any other types of cases" and that "the record reflects that the district court evaluated the factors set forth in Fed. R. Civ. P. 42(b) and that its decision to bifurcate the trial between liability and damages was the product of an informed exercise of discretion." (Pa 6-7). In addition, the Third Circuit recognized that White failed to demonstrate that he was prejudiced in any respect whatsoever by the bifurcation decision. (Pa 7-8).

REASONS FOR DENYING THE WRIT

The entire foundation for Petitioner's Petition for Writ of Certiorari is based on the premise that the district court bifurcated the liability and damage phases of this case without engaging in an informed analysis. This premise is incorrect. The district court detailed its analysis which led to the reasonable and informed decision to bifurcate. (Pa 23-24, 27-30). The Third Circuit then found that there was nothing in the record which established that the district court had a routine practice of bifurcating cases, and that, in fact, the record reflected that the district court had evaluated the factors set forth in Fed. R. Civ. P. 42(b) and that its decision to bifurcate the trial between liability and damages was the product of an informed exercise of discretion. (Pa 6-7).

The questions which Petitioner seeks to raise in his Petition regarding "assembly-line bifurcation" (Question 1) and "bifurcating . . . without engaging in an informed analysis" (Question 2) are simply not presented in this action, and indeed, the lower courts have so held. It would be

unwarranted and inappropriate for this Court to review hypothetical issues presented by the Petitioner which have no legitimate support in the evidentiary record of this litigation.

The decision of the courts below was a correct application of settled law. No conflict among the circuits is even alleged.

Fed. R. Civ. P. 42(b) provides, in relevant part, that the "court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any, claim . . ." The decision of whether or not to bifurcate a case is firmly within the discretion of the trial court. *Barr Laboratories, Inc. v. Abbott Laboratories*, 978 F.2d 98, 115 (3d Cir. 1992). To be reversible, an order to bifurcate must result in demonstrable prejudice to the plaintiff and be an abuse of discretion. *Franklin Music Co. v. American Broadcasting Companies, Inc.*, 616 F.2d 528, 538 (3d Cir. 1979); *Barr Laboratories*, 978 F.2d at 115. (Pa 7-8, 26-27).

In *Lis v. Robert Packer Hospital*, 579 F.2d 819 (3d Cir. 1978), *cert. denied*, 439 U.S. 955 (1978), the trial court had a standing, general policy of bifurcating all negligence cases. In *Lis*, the Third Circuit ruled that the Draconian remedy of a new trial would not be granted absent a showing of prejudice. In dicta, the court stated that a standard, bright line rule of bifurcating all negligence cases was inappropriate and that a showing of prejudice "may not be necessary" in the future, if the trial court could not support its decision to bifurcate under the circumstances of a particular case. *Id.* at 825.

Since the *Lis* decision, however, the Third Circuit has consistently restated the principal that a district court's decision to bifurcate would not be set aside absent a showing of prejudice. The year after the *Lis* opinion, the Third Circuit decided *Franklin Music v. American Broadcasting Co.*, 616 F.2d 528, 538 (3d Cir. 1979) and reiterated the rule that a bifurcation decision will be reversed only if the bifurcation resulted in demonstrable prejudice and was an abuse of judicial discretion. *See also Barr Laboratories, Inc. v. Abbott Laboratories*, 978 F.2d 98, 115 (3d Cir. 1992) ("Barr is not entitled to rely upon the *Lis dicta* to excuse its failure to demonstrate prejudice resulting from the bifurcation to which it objects.") (Pa 7-8).

In this case, the courts below held that, unlike the trial court in *Lis*, this trial court did not have a standing, general, routine policy of bifurcating all negligence cases. The courts below held that the trial court clearly evaluated the factors set forth in Fed. R. Civ. P. 42(b) and that its decision to bifurcate the trial between liability and damages was reasonable, informed, and a proper exercise of discretion. (Pa 7). Moreover, the courts below determined that there was a complete absence of any prejudice suffered by White by the court's bifurcation decision. (Pa 7-8, 27, 31). The decision to bifurcate was not improper and was not an abuse of judicial discretion.

The crux of the petition is really a factbound allegation that the courts below reached an improper factual conclusion regarding the district court's bifurcation decision. There is no confusion or conflict in the lower courts that Fed. R. Civ. P. 42(b) is a valid and existing rule of law. Petitioner is merely seeking review of an allegedly erroneous factual

finding or the alleged misapplication of a properly stated rule of law. There is no valid cause for this Court's review.

Bifurcation of the trial in this case was authorized and justified. The lower courts determined that the district court made a reasoned and informed decision to bifurcate the liability and damage phases of the trial and that its decision constituted a valid exercise of its discretion pursuant to Fed. R. Civ. P. 42(b). Significantly, the courts below found that the bifurcation decision did not result in any prejudice to Petitioner. Petitioner's challenge to this proper application of settled law does not warrant this Court's review.

CONCLUSION

For all of the foregoing reasons, Respondent, SMI of Pattison Avenue, L.P., by its undersigned counsel, respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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